

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
FIDEL ANTONIO MENDEZ,  
  
Defendant.

No. CR-12-6024-FVS

ORDER DENYING DEFENDANT'S  
MOTION FOR RECONSIDERATION

**THIS MATTER** came before the Court on January 10, 2013, on Defendant's motion for reconsideration of the Court's October 9, 2012 order denying Defendant's motion to dismiss Count 2 of the Superseding Indictment (ECF No. 81). (ECF No. 94). Defendant was represented by Diane E. Hehir. The Government was represented by Alexander C. Ekstrom. This order is intended to memorialize and supplement the Court's oral ruling.

**BACKGROUND**

Count 2 of the Superseding Indictment in this matter alleges a violation of 18 U.S.C. § 922(g)(1). Section 922(g)(1) criminalizes the possession of a firearm by an individual who has previously been convicted in any court of a "crime punishable by imprisonment exceeding one year." 18 U.S.C. § 922(g)(1).

Defendant previously argued that because his 2006 juvenile adjudication is not a conviction of a crime, it cannot be construed as a crime punishable by more than one year for purposes of Count 2 in this case. Defendant continues to assert that the predicate offense

1 for Count 2, Defendant's 2006 Unlawful Possession of a Firearm in the  
2 Second Degree, occurred when Defendant was a juvenile, and juvenile  
3 adjudications do not constitute criminal convictions in the state of  
4 Washington.

5 As previously addressed by the Court, the Washington State  
6 Revised Code defines the Unlawful Possession of a Firearm in the  
7 Second Degree offense for which Defendant was adjudicated guilty as  
8 follows:

9 A person, whether an adult or juvenile, is guilty of the crime of  
10 unlawful possession of a firearm in the second degree, if the  
11 person . . . owns, has in his or her possession, or has in his or  
her control any firearm . . . [i]f the person is under eighteen  
years of age . . . .

12 Wash.Rev.Code 9.41.040(2)(a). The statute further provides that "a  
13 person has been 'convicted', whether in an adult court or adjudicated  
14 in a juvenile court, at such time as a plea of guilty has been  
15 accepted, or a verdict of guilty has been filed . . . ."

16 Wash.Rev.Code 9.41.040(3). Unlawful Possession of a Firearm in the  
17 Second Degree is a class C felony in the state of Washington.

18 Wash.Rev.Code 9.41.040(2)(b). A class C felony warrants imprisonment  
19 for up to 5 years. Wash.Rev.Code 9A.20.021(1)(c). (ECF No. 81).

20 The Court determined that Defendant's juvenile adjudication of  
21 guilt for Unlawful Possession of a Firearm in the Second Degree  
22 qualifies as a conviction, of a crime, which is punishable by  
23 imprisonment for a term exceeding one year. *See State v. McKinley*,  
24 929 P.2d 1145, 1149-1150 (Wash. 1997) (holding that juvenile  
25 adjudication of guilt constitutes "conviction" for purposes of  
26 Washington's unlawful possession of a firearm statute). (ECF No. 81).

1           **DISCUSSION**

2       **I.     Timeliness of Motion for Reconsideration**

3           The Government asserts that those portions of Defendant's motion  
4 for reconsideration which do not address a Second Amendment challenge  
5 to Count 2 of the indictment are untimely and should therefore be  
6 stricken. (ECF No. 100 at 2).

7           On October 9, 2012, the Court denied Defendant's motion to  
8 dismiss count 2 of the indictment. (ECF No. 81). On November 6,  
9 2012, Defendant filed a motion for an extension of time to file  
10 additional pretrial motions. (ECF No. 89). The Government responded  
11 it understood the request for a continuance was based on Defendant's  
12 desire to raise one new challenge to Count 2 of the indictment (an  
13 assertion of a violation of the Second Amendment). The Government  
14 indicated it had no objection to the motion for a continuance solely  
15 for this purpose (ECF No. 92). The Court granted the motion for a  
16 continuance and set a pretrial motions deadline for December 20, 2012.  
17 (ECF No. 93). Defendant filed the instant motion for reconsideration  
18 on that date.

19           The district court has inherent authority within the time period  
20 allowed for filing an appeal to reconsider a prior order. *United*  
21 *States v. Jones*, 608 F.2d 386, 390 (9<sup>th</sup> Cir. 1979) ("Allowing the  
22 district court to reconsider its suppression order furthers the policy  
23 favoring judicial economy."); *United States v. Rubio*, 727 F.2d 786,  
24 799 (9<sup>th</sup> Cir. 1983) (A motion for reconsideration is timely presented  
25 if filed within the original period for review.). However, "trial  
26 court decisions ordinarily become final and unreviewable when the time

1 for appeal and reconsideration has expired." *United States v. Foumai*,  
2 910 F.2d 617, 620 (9<sup>th</sup> Cir. 1990). A defendant's notice of appeal  
3 must be filed within 14 days after the entry of the order being  
4 appealed. Fed.R.App.P. 4(b)(1)(A)(i).

5 The order being challenged by Defendant was issued by the Court  
6 on October 9, 2012. (ECF No. 81). Defendant filed his motion for  
7 reconsideration on December 20, 2012. Although the Court believes it  
8 is probably a close call on the issue regarding the timeliness of  
9 Defendant's motion for reconsideration, the Court is inclined to  
10 address the merits of Defendant's claims in the instant motion.  
11 Accordingly, the Government's motion to dismiss Defendant's motion for  
12 reconsideration as untimely is denied.

## 13 **II. Merits of Defendant's Claims**

### 14 **A. Due Process**

15 Defendant asserts that, pursuant to *United States v. Tighe*, 266  
16 F.3d 1187 (9<sup>th</sup> Cir. 2001), due process considerations require  
17 dismissal. (ECF No. 95 at 2). In *Tighe*, the Ninth Circuit held that  
18 a prior juvenile adjudication could not serve as a predicate  
19 conviction for a sentencing enhancement under 18 U.S.C. § 924 because  
20 the underlying conduct was never proven to a jury. This argument was  
21 articulated by Defendant in his initial briefing.

22 As indicated by the Court in its prior order, in *Tighe*, the Ninth  
23 Circuit did not conclude that the juvenile adjudication could not be  
24 used in the context of sentencing, just that it needed to be presented  
25 to the jury. *Id.* at 1194. Here, as previously indicated by  
26 Government, Defendant's juvenile conviction under Wash.Rev.Code

1 9.41.040 will be presented to the jury. (ECF No. 69 at 15). In  
2 addition, Defendant is currently facing trial, not a sentencing  
3 hearing. As previously concluded by the Court, Defendant's Due  
4 Process argument is misplaced.

5 **B. Rule 609**

6 Defendant again requests that the Court prohibit the Government  
7 from referencing the juvenile adjudication of Defendant at trial under  
8 Fed.R.Evid. 609. (ECF No. 95 at 3-4).

9 As previously indicated by the Court, Rule 609 applies to an  
10 attack of a witness's character for truthfulness by evidence of a  
11 criminal conviction. Fed.R.Evid. 609(a). Evidence of Defendant's  
12 juvenile adjudication will be offered by the Government to prove an  
13 element of the crime alleged in Count 2, not to attack his character  
14 for truthfulness. Defendant's Rule 609 claim is without merit.

15 **C. Second Amendment**

16 Defendant, citing *District of Columbia v. Heller*, 128 S.Ct. 2783  
17 (2008), asserts there are also Second Amendment problems with the use  
18 of a juvenile adjudication as disqualification of the right to bear  
19 arms. (ECF No. 95 at 5-6).

20 The Supreme Court in *Heller* determined that "the Second Amendment  
21 conferred an individual right to keep and bear arms," albeit not an  
22 unlimited right. *Heller*, 128 S.Ct. at 2799. In identifying broadly  
23 the scope of those limitations, the Supreme Court emphasized that  
24 "nothing in our opinion should be taken to cast doubt on longstanding  
25 prohibitions on the possession of firearms by felons and the mentally  
26 ill, or laws forbidding the carrying of firearms in sensitive places

1 such as schools and government buildings, or laws imposing conditions  
2 and qualifications on the commercial sale of arms." *Id.* at 2816-17.  
3 *Heller* did not disturb or implicate the constitutionality of Section  
4 922(g). *See United States v. Vongxay*, 594 F.3d 1111, 1114 (9th Cir.  
5 2010). Therefore, charging Defendant under 18 U.S.C. § 922(g)(1) does  
6 not raise Second Amendment issues.

7 **D. Equal Protection**

8 Defendant contends an equal protection problem arises from  
9 treating him differently than citizens of other states. (ECF No. 95  
10 at 6-8). *See United States v. Walters*, 359 F.3d 340, 346 (4<sup>th</sup> Cir.  
11 2004) (holding that Mr. Walter's prior juvenile adjudications could  
12 not serve as underlying convictions necessary to support felon in  
13 possession of firearm charges in the United States District Court for  
14 the Eastern District of Virginia).

15 The *Walters* decision applied Virginia State law. Defendant,  
16 however, violated Washington State law. Accordingly, in this case,  
17 the Court is compelled to apply Washington State law to determine  
18 whether Defendant was convicted of a crime punishable by imprisonment  
19 for a term exceeding one year. *See* 18 U.S.C. § 921(a)(20) ("What  
20 constitutes a conviction of . . . a crime [punishable by imprisonment  
21 for a term exceeding one year] shall be determined in accordance with  
22 the law of the jurisdiction in which the proceedings were held."). If  
23 Defendant violated the laws of Virginia or some other jurisdiction,  
24 the characterizations of his offense may very well have been  
25 different.

26 ///

1 The Ninth Circuit considered an equal protection challenge to 18  
2 U.S.C. § 922(g)(1) in *Vongxay*. *Vongxay*, 594 F.3d at 1118-1119  
3 (Vongxay argued that 18 U.S.C. § 922(g)(1) violated his right to equal  
4 protection under the Fifth Amendment because the status of "felon" is  
5 determined differently from state-to-state). The Ninth Circuit  
6 determined that Section 922(g)(1), which defers to differing state  
7 laws to define its terms, did not violate the equal protection  
8 guarantees of the Fifth Amendment. *Id.*

9 The Court determines that 18 U.S.C. § 922(g)(1)'s use of state  
10 law felony classifications does not violate the Equal Protection  
11 Clause.

12 **E. Juvenile Delinquents Under Washington Law**

13 In Defendant's reply brief, Defendant argues that juvenile  
14 delinquents cannot be "imprisoned" under Washington State law. (ECF  
15 No. 102 at 6-7). Defendant contends they are instead "detained" by  
16 the Department of Social and Health Services. Wash.Rev.Code  
17 13.40.020(5). Defendant also argues for the first time in his reply  
18 brief that Defendant's confinement as a result of his juvenile  
19 adjudication could not have exceeded one year. (ECF No. 102 at 7-8).  
20 Defendant asserts that the maximum commitment of a juvenile delinquent  
21 varies depending upon his age at the time of his juvenile  
22 adjudication, and Defendant was in a category calling for a detention  
23 of less than 30 days. *Id.*

24 Defendant's arguments are unpersuasive. As articulated by the  
25 Court in its prior order, pursuant to Wash.Rev.Code 9.41.040, "a  
26 person has been 'convicted', whether in an adult court or adjudicated

1 in a juvenile court, at such time as a plea of guilty has been  
2 accepted, or a verdict of guilty has been filed . . . ."  
3 Wash.Rev.Code 9.41.040(3). Unlawful Possession of a Firearm in the  
4 Second Degree is a class C felony, Wash.Rev.Code 9.41.040(2)(b), and a  
5 class C felony warrants imprisonment for up to 5 years, Wash.Rev.Code  
6 9A.20.021(1)(c). (ECF No. 81). Consequently, Defendant faced a  
7 maximum of 5 years imprisonment for his conviction of the class C  
8 felony, Unlawful Possession of a Firearm in the Second Degree.

### 9 **III. Bifurcation**

10 Defendant requests that the Court bifurcate his trial. (ECF No.  
11 95 at 4). Defendant suggests that phase one would include evidence  
12 pertaining to Count 1 of the indictment, Defendant's possession of an  
13 unregistered firearm, and phase two would include evidence regarding  
14 Count 2 of the indictment, Felon in Possession of a Firearm. The  
15 Government opposes bifurcation. (ECF No. 100 at 5, n. 4).

16 Because the juvenile adjudication is not an element of the  
17 charged offense in Count 1, the Court determines that bifurcation is  
18 appropriate in order to avoid any resultant prejudice on Count 1  
19 stemming from the introduction of evidence of Defendant's prior  
20 juvenile adjudication. Therefore, Defendant's request to bifurcate  
21 the counts is granted. The trial on Count 2 shall trail the trial on  
22 Count 1.

### 23 **CONCLUSION**

24 Pursuant to Washington State law, a juvenile adjudication under  
25 Wash.Rev.Code 9.41.040 is a crime punishable by imprisonment exceeding  
26 one year for purposes of 18 U.S.C. § 922(g)(1). Accordingly, **IT IS**



1 **HEREBY ORDERED** that Defendant's motion for reconsideration of the  
2 Court's October 9, 2012 order denying Defendant's motion to dismiss  
3 Count 2 of the Superseding Indictment (**ECF No. 94**) is **DENIED**.

4 **IT IS SO ORDERED.** The District Court Executive is hereby  
5 directed to enter this order and furnish copies to counsel.

6 **DATED** this 11th day of January, 2013.

7  
8 S/Fred Van Sickle  
9 Fred Van Sickle  
10 Senior United States District Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26